

CBT Chapters

- Overview
- Essential Functions
- Reasonable Accommodations
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Overview

The Americans with Disabilities Act (ADA), signed into law on July 26, 1990, and amended by the Americans with Disabilities Act Amendments Act (ADAAA), which went into effect on January 1, 2009, prohibits discrimination on the basis of disability in the following areas:

- Employment
- State and local government services
- Public accommodations
- Commercial facilities
- Transportation
- Telecommunications



Title I, Employment, will be the focus of this training course.

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Statutory Definition

The ADA applies to persons who meet the definition of "disabled" under the Act. With respect to an individual, the term "disability" means

- A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- A record of such an impairment; or
- Being regarded as having such an impairment.



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Statutory Definition (continued)

Major life activities are the basic components of any person's life including

- Caring for oneself
- Lifting
- Bending
- Speaking
- Breathing
- Learning
- Reading
- Concentrating
- Thinking
- Communicating
- Performing manual tasks
- Seeing
- Hearing
- Eating
- Sleeping
- Walking
- Standing



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Statutory Definition (continued)

Major life activities can also involve "Major Bodily Functions," which includes, but is not limited to

- Functions of the immune system
- Cell growth
- Digestive, bladder, and bowel functions
- Neurological and brain functions
- Respiratory and circulatory functions
- Endocrine functions
- Reproductive functions



This definition, expanded with the ADAAA, includes conditions where the treatment itself substantially limits a major life activity (e.g., medications interfering with cognition, memory, or coordination).

It's important to remember that the ADA must be applied on an individualized, fact specific, case-by-case basis.

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ADA Exclusions

Exclusions from the ADA include

- Vision loss corrected by eyeglasses or contacts
- Common personality traits such as poor judgment, quick temper or irresponsible behavior
- Simple physical characteristics such as being left-handed or very tall

As well as

- Environmental, cultural or economically disadvantaged individuals (i.e., lack of education or prison record)
- Pregnancy
- Homosexuality and bi-sexuality
- Social and behavioral disorders such as transvestitism, voyeurism, etc.
- Current, illegal drug use



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Title I

Title I of the ADA covers employment and is designed to remove barriers that prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities. Title I covers the following:

- Job application procedures
- Hiring
- Terminations
- Advancement
- Compensation
- Training
- And other terms, conditions, and privileges of employment

As well as...

- Recruitment
- Advertising
- Tenure
- Layoffs and reductions in force
- Leave
- Fringe benefits
- And all other employment-related activities



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Who Must Comply?

The following entities must comply with Title I of the ADA. The ADA calls these "covered entities."

- Private employers with 15 or more employees
- State and local governments
- Employment agencies
- Labor unions
- Joint labor-management committees



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Knowledge Check

Which of the following is **NOT** a major life activity identified in the ADA?

Please click on your selection below.

- ☐ Hearing
- ☐ Seeing
- ☐ Marathon running
- ☐ Speaking
- ☐ Walking
- ☐ Breathing
- ☐ Reading
- ☐ Learning
- ☐ Caring for oneself
- ☐ Bending

Submit Answer

Knowledge



Check

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Meet Bob - HR Professional

This is Bob, one of our Human Resources professionals. He'll be assisting us as we navigate through this CBT.

During the training course, we'll rely on Bob to offer guidance and expertise with our technical questions. Click on Bob's picture to learn more about him.



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Chapter Summary: Overview

This completes the Overview chapter. The next chapter discusses essential functions of a position. If questions arise as you go through this material, please take the time to write them down to discuss them with your supervisor.

Click the next arrow to continue the course.

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Essential Functions

Essential functions are the fundamental job duties that an individual must be able to perform with or without reasonable accommodation.

A written job description that has been prepared in advance of advertising or interviewing applicants for a job will be considered as evidence of the essential functions of the job. Job descriptions should be reviewed periodically to make sure they accurately reflect the actual functions of a job.

According to the U.S. Department of Justice, a reasonable accommodation is any modification or adjustment to a job or the work environment that will enable a qualified applicant or employee with a disability to participate in the application process or to perform essential job functions. Reasonable accommodations will be covered in more detail later in this CBT.



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Performance Standards

The ADA does not relieve an employee or applicant with a disability from the obligation to perform the essential functions of the job.

To the contrary, the ADA is intended to enable persons with disabilities to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.



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Knowledge Check

Click on the item below which you believe best responds to what is an essential function.

- ☐ *The areas of the job that are the reasons that the job exists.*
- ☐ *The key activities or tasks of the job.*
- ☐ *The most critical and most frequently performed tasks of the job.*
- ☐ *All of the above.*
- ☐ *None of the above.*

Submit Answer

Knowledge



Check

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Let's Ask Bob

If a supervisor wanted an outline of the essential functions of a job in the State, where would she find them?

Click on Bob's picture to find out.



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Chapter Summary: Essential Functions

This completes the Essential Functions chapter. The next chapter will discuss reasonable accommodations. These may be new to you and prompt a discussion with your supervisor.

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Reasonable Accommodations

To be protected under the ADA, an employee must

- Satisfy the employer's legitimate requirements for the job, such as education, employment experience, skills, licenses, or other requirements of a job that the employee holds or seeks.
- Be able to perform the essential functions of the job with or without reasonable accommodation.

The ADA requires employers to provide reasonable accommodations to the known physical or mental limitations of qualified applicants and employees with disabilities, unless to do so would cause "undue hardship."

Let's take a look at what are and are not reasonable accommodations, as well as what constitutes undue hardship.



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Limiting Workplace Barriers

Reasonable accommodations may include:

- Making existing facilities accessible
- Job restructuring
- Part-time or modified work schedules
- Approving/extending a leave of absence
- Acquiring or modifying equipment
- Providing tests, training materials, or policies in a different format
- Providing qualified readers or interpreters
- Reassignment to a vacant position in accordance with applicable laws, rules and policies



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Personal Services or Devices

An employer is not required to provide personal services or personal devices to accommodate an applicant or an employee with a disability.

Examples include:

- Wheelchairs
- Prescription eyeglasses
- Hearing aids
- Personal attendant, etc.

These must be provided by the applicant or the employee.



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What is "Undue Hardship"?

Based on the resources of the employer, undue hardship is defined as: "significant difficulty or expense." The burden of proof lies with the employer to demonstrate the accommodation is too difficult, too expensive or too disruptive.

In fact, the Job Accommodation Network (JAN), a toll-free service that advises businesses and individuals about accommodations, reports that almost half of all accommodations cost less than \$600. Many accommodations are no-cost!

Let's ask Bob a couple of questions about reasonable accommodations.



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Let's Ask Bob

To perform the job, an employee with complete hearing loss must be able to contact the public by telephone. The employee proposes that he can use a TTY or video phone to call and relay the conversation between the parties. Is this reasonable?

Click on Bob's picture to find out.



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Requests for Accommodation

An employer is obligated to make an accommodation only to the known limitations of an otherwise qualified individual with a disability. In general, it is the responsibility of the applicant or the employee with a disability to advise the employer that an accommodation is needed.



An applicant or employee does not have to specifically request a "reasonable accommodation," but must only let the employer know that some adjustment or change is needed to do a job because of limits caused by a disability.

A request for accommodation may be initiated by an applicant or a current employee. Supervisors should contact their agency ADA Coordinator or Human Resources office for guidance.

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Chapter Summary: Reasonable Accommodations

This completes the Reasonable Accommodations chapter. The next chapter will discuss how to avoid discrimination. Remember to record your questions and discuss with your supervisor.

Click the next arrow to continue the course.

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Discrimination

Discrimination under ADA may include

- Denying an otherwise qualified applicant a job because he/she has a disability
- Not providing needed accommodations so a qualified individual with a disability does not have access to the same employment privileges of non-disabled employees

Let's learn more about avoiding discrimination.



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Pre-employment Screening

The ADA prohibits any pre-employment inquiries by an employer about a disability on application forms, in job interviews, or on background or reference checks. This is necessary to ensure that qualified candidates are not screened out because of their disability before their actual ability to do a job is evaluated. Specifically, the employer may not ask questions about

- Whether a disability exists
- The nature or severity of a disability,
- The condition causing a disability,
- Any prognosis or expectation regarding a condition or disability, or
- Whether the individual will need treatment or special leave because of a disability.

Applicants can be asked questions about their ability to perform job-related functions, as long as the questions are not phrased in terms of a disability and all applicants are asked the same questions.

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Substance Abuse

An employer may discharge or deny employment to current illegal users of drugs, on the basis of such drug use, without fear of being held liable for disability discrimination. Current illegal users of drugs are not "individuals with disabilities" under the ADA.

The illegal use of drugs includes the use, possession, or distribution of drugs which are unlawful under the Controlled Substances Act. It includes the use of illegal drugs and the illegal use of prescription drugs that are "controlled substances."

An individual who illegally uses drugs but also has a disability, for example epilepsy, is only protected by the ADA from discrimination on the basis of the disability (epilepsy). An employer can discharge or deny employment to such an individual on the basis of his/her illegal use of drugs.



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Substance Abuse (continued)

While a current illegal user of drugs has no protection under the ADA, a person who currently uses alcohol is not automatically denied protection simply because of the alcohol use. An alcoholic is a person with a disability under the ADA and may be entitled to consideration of accommodation, if he/she is qualified to perform the essential functions of a job. However, an employer may discipline, discharge, or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he/she is not "qualified."

Persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of **past** drug addiction.



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Let's Ask Bob

An employee frequently comes to work smelling of alcohol. Although the employee is adequately performing his or her job, the employee's conduct is somewhat erratic - with mood swings. How would this be handled?

Click on Bob's picture to find out.



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Retaliation

The ADA prohibits retaliation by an employer against an applicant or employee for asserting his or her rights under the ADA.

It's also unlawful to discriminate against an applicant or employee, whether disabled or not, because of that individual's **association with a person who has a disability**.



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Non-compliance

The ADA is enforced by the Equal Employment Opportunity Commission (EEOC). Some examples of violations that resulted in penalties include

- 2004 UPS: \$9.9 million for not hiring drivers who were deaf
- 2005 Walmart: \$7.5 million for not hiring an applicant with cerebral palsy



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Where to Obtain Assistance

Each ADA case is unique and specific and must stand on its own merit. We must be diligent to prohibit discrimination.

Contact your agency Human Resources office, your ADA Coordinator, or the Attorney General's Employment Law section with questions regarding ADA employment issues.



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Chapter Summary: Discrimination Prohibited

This completes the Discrimination Prohibited chapter. The next section is the final exam.

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